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4 Attorney for Defendant
5 MARIO MIGUEL MONTALVO, an individual doing business as
6 SUPER MARIO PORTABLE WELDING

7 UNITED STATES DISTRICT COURT

8 CENTRAL DISTRICT OF CALIFORNIA

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11 CONSTRUCTION LABORERS TRUST) Case No.: CV10-01193 DMG (SSx)
Funds for Southern California)
12 ADMINISTRATIVE COMPANY, a) ANSWER TO COMPLAINT BY
Delaware limited liability company,) DEFENDANT MARIO MIGUEL
13 Plaintiff,) MONTALVO, an individual doing
v.) business as SUPER MARIO PORTABLE
14) WELDING
15) JURY TRIAL DEMANDED
16 MARIO MIGUEL MONTALVO, an)
individual doing business as SUPER)
17 MARIO PORTABLE WELDING; GREAT)
AMERICAN INSURANCE COMPANY, an)
Ohio corporation; DOE 1 through DOE)
18 10, inclusive,)
19 Defendants.)
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Defendant, MARIO MIGUEL MONTALVO, an individual doing business as
SUPER MARIO PORTABLE WELDING, answers to the Complaint filed in this matter,
and alleges as follows:

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1 1. Answering Paragraph 1 of the Complaint, Defendant is without
2 sufficient knowledge and information as to the truth of the allegations and on that
3 basis denies each and every allegation in this paragraph. Paragraph 1 also contains
4 legal allegations which do not require a response by Defendant.

5 2. Answering Paragraph 2 of the Complaint, Defendant admits that venue
6 is proper in the Central District in that the performance and alleged breach took
7 place in this district, and the employer engages in business in this district. Except
8 as expressly admitted, Defendant is without sufficient knowledge and information as
9 to the truth of the allegations and on that basis denies each and every allegation in
10 this paragraph.

11 3. Answering Paragraph 3 of the Complaint, Defendant is without
12 sufficient knowledge and information as to the truth of the allegations and on that
13 basis denies each and every allegation in this paragraph.

14 4. Answering Paragraph 4 of the Complaint, Defendant admits that Mario
15 Miguel Montalvo is an individual doing business as Super Mario Portable Welding,
16 and was and now is a resident of the City of Escondido, County of San Diego, State
17 of California.

18 5. Answering Paragraph 5 of the Complaint, Defendant is without
19 sufficient knowledge and information as to the truth of the allegations and on that
20 basis denies each and every allegation in this paragraph.

21 6. Answering Paragraph 6 of the Complaint, Paragraph 6 contains legal
22 allegations which do not require a response by Defendant.

23 7. Answering Paragraph 7 of the Complaint, Defendant reasserts and
24 incorporates by reference each and every answer contained in Paragraphs 1
25 through 6 above as though fully set forth herein.

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1 8. Answering Paragraph 8 of the Complaint, Defendant is without
2 sufficient knowledge and information as to the truth of the allegations and on that
3 basis denies each and every allegation in this paragraph.

4 9. Answering Paragraph 9 of the Complaint, Defendant is without
5 sufficient knowledge and information as to the truth of the allegations and on that
6 basis denies each and every allegation in this paragraph.

7 10. Answering Paragraph 10 of the Complaint, Defendant is without
8 sufficient knowledge and information as to the truth of the allegations and on that
9 basis denies each and every allegation in this paragraph.

10 11. Answering Paragraph 11 of the Complaint, Defendant is without
11 sufficient knowledge and information as to the truth of the allegations and on that
12 basis denies each and every allegation in this paragraph.

13 12. Answering Paragraph 12 of the Complaint, Defendant is without
14 sufficient knowledge and information as to the truth of the allegations and on that
15 basis denies each and every allegation in this paragraph.

16 13. Answering Paragraph 13 of the Complaint, Defendant is without
17 sufficient knowledge and information as to the truth of the allegations and on that
18 basis denies each and every allegation in this paragraph.

19 14. Answering Paragraph 14 of the Complaint, Defendant is without
20 sufficient knowledge and information as to the truth of the allegations and on that
21 basis denies each and every allegation in this paragraph.

22 15. Answering Paragraph 15 of the Complaint, Defendant is without
23 sufficient knowledge and information as to the truth of the allegations and on that
24 basis denies each and every allegation in this paragraph.

25 16. Answering Paragraph 16 of the Complaint, Defendant is without
26 sufficient knowledge and information as to the truth of the allegations and on that
27 basis denies each and every allegation in this paragraph.

1 17. Answering Paragraph 17 of the Complaint, Defendant is without
2 sufficient knowledge and information as to the truth of the allegations and on that
3 basis denies each and every allegation in this paragraph.

4 18. Answering Paragraph 18 of the Complaint, Defendant is without
5 sufficient knowledge and information as to the truth of the allegations and on that
6 basis denies each and every allegation in this paragraph.

7 19. Answering Paragraph 19 of the Complaint, Defendant is without
8 sufficient knowledge and information as to the truth of the allegations and on that
9 basis denies each and every allegation in this paragraph.

10 20. Answering Paragraph 20 of the Complaint, Defendant is without
11 sufficient knowledge and information as to the truth of the allegations and on that
12 basis denies each and every allegation in this paragraph.

13 21. Answering Paragraph 21 of the Complaint, Defendant is without
14 sufficient knowledge and information as to the truth of the allegations and on that
15 basis denies each and every allegation in this paragraph.

16 22. Answering Paragraph 22 of the Complaint, Defendant reassert and
17 incorporate by reference each and every answer contained in Paragraphs 1 through
18 21 above as though fully set forth herein.

19 23. Answering Paragraph 23 of the Complaint, Paragraph 23 contains legal
20 allegations which do not require a response by Defendant.

21 24. Answering Paragraph 24 of the Complaint, Defendant is without
22 sufficient knowledge and information as to the truth of the allegations and on that
23 basis denies each and every allegation in this paragraph.

24 25. Answering Paragraph 25 of the Complaint, Defendant is without
25 sufficient knowledge and information as to the truth of the allegations and on that
26 basis denies each and every allegation in this paragraph.

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1 26. Answering Paragraph 26 of the Complaint, Defendant is without
2 sufficient knowledge and information as to the truth of the allegations and on that
3 basis denies each and every allegation in this paragraph.

4 27. Answering Paragraph 27 of the Complaint, Defendant is without
5 sufficient knowledge and information as to the truth of the allegations and on that
6 basis denies each and every allegation in this paragraph.

7 28. Answering Paragraph 28 of the Complaint, Defendant is without
8 sufficient knowledge and information as to the truth of the allegations and on that
9 basis denies each and every allegation in this paragraph.

10 29. Answering Paragraph 29 of the Complaint, Defendant reassert and
11 incorporate by reference each and every answer contained in Paragraphs 1 through
12 28 above as though fully set forth herein.

13 30. Answering Paragraph 30 of the Complaint, Defendant is without
14 sufficient knowledge and information as to the truth of the allegations and on that
15 basis denies each and every allegation in this paragraph.

16 31. Answering Paragraph 31 of the Complaint, Defendant is without
17 sufficient knowledge and information as to the truth of the allegations and on that
18 basis denies each and every allegation in this paragraph.

19 32. Answering Paragraph 32 of the Complaint, Defendant is without
20 sufficient knowledge and information as to the truth of the allegations and on that
21 basis denies each and every allegation in this paragraph.

22 33. Answering Paragraph 33 of the Complaint, Defendant is without
23 sufficient knowledge and information as to the truth of the allegations and on that
24 basis denies each and every allegation in this paragraph.

25 34. Answering Paragraph 34 of the Complaint, Defendant is without
26 sufficient knowledge and information as to the truth of the allegations and on that
27 basis denies each and every allegation in this paragraph.

35. Answering Paragraph 35 of the Complaint, Defendant reassert and incorporate by reference each and every answer contained in Paragraphs 1 through 34 above as though fully set forth herein.

36. Answering Paragraph 36 of the Complaint, Defendant is without sufficient knowledge and information as to the truth of the allegations and on that basis denies each and every allegation in this paragraph.

37. Answering Paragraph 37 of the Complaint, Defendant is without sufficient knowledge and information as to the truth of the allegations and on that basis denies each and every allegation in this paragraph.

38. Answering Paragraph 38 of the Complaint, Defendant is without sufficient knowledge and information as to the truth of the allegations and on that basis denies each and every allegation in this paragraph.

AFFIRMATIVE DEFENSES

Without prejudice to the denials set forth in Defendant's Answer and without admitting any allegations of the Complaint not otherwise admitted, Defendant asserts the following affirmative defenses. In addition to the defenses described below, Defendant reserves the right to assert additional defenses that may become known through the discovery process.

FIRST AFFIRMATIVE DEFENSE

As a first, separate and distinct affirmative defense, this answering Defendant alleges that the Complaint, and each and every purported cause of action contained therein, fails to state facts sufficient to constitute a cause of action against this answering Defendant.

SECOND AFFIRMATIVE DEFENSE

As a second, separate and distinct affirmative defense, this answering Defendant alleges that the damages suffered by the Plaintiff, if any, were the direct and proximate result of the negligence of parties, persons, corporations and/or

1 entities other than this answering Defendant, and that the liability of this answering
2 Defendant, if any, is limited in direct proportion to the percentage of fault actually
3 attributable to him.

4 THIRD AFFIRMATIVE DEFENSE

5 As a third, separate and distinct affirmative defense, this answering
6 Defendant is informed and believes and thereon alleges that at all times mentioned
7 herein, Plaintiff was negligent, careless and reckless and unlawfully conducted itself
8 so as to directly and proximately contribute to the happening of the incident and the
9 occurrence of claimed damages, all of which said negligence bars either completely
10 or partially the damages sought herein.

11 FOURTH AFFIRMATIVE DEFENSE

12 As a fourth, separate and distinct affirmative defense, this answering
13 Defendant is informed and believes and thereon alleges that the Plaintiff has
14 engaged in conduct and activities with respect to the property and activities which
15 are the subject of the Complaint and by reason of said activities is estopped from
16 asserting any claim for damages or seeking any other relief against this answering
17 Defendant.

18 FIFTH AFFIRMATIVE DEFENSE

19 As an fifth, separate and distinct affirmative defense, this answering
20 Defendant is informed and believes and thereon alleges that the Plaintiff has
21 engaged in conduct and activities sufficient to constitute a waiver of any alleged
22 breach of conduct, negligence, or any other conduct, if any, as set forth in the
23 Complaint.

24 SIXTH AFFIRMATIVE DEFENSE

25 As a sixth, separate and distinct affirmative defense, this answering
26 Defendant is informed and believes and thereon alleges that the injuries and
27 damages of which the Plaintiff complains were proximately caused or contributed to

1 by the acts of other persons and/or other entities and that said acts were an
2 intervening and/or superseding cause of the injuries and damages, if any, of which
3 the Plaintiff complains, thus barring any recovery against this answering Defendant.

4 SEVENTH AFFIRMATIVE DEFENSE

5 As a seventh, separate and distinct affirmative defense, this answering
6 Defendant alleges that Plaintiff expressly, voluntarily and knowingly assumed all
7 risks about which he complains and that, therefore, she is barred either totally or to
8 the extent of said assumption from any damages.

9 EIGHTH AFFIRMATIVE DEFENSE

10 As an eighth, separate and distinct affirmative defense, this answering
11 Defendant is informed and believes and thereon alleges that each and every one of
12 Plaintiff's causes of action are barred by the doctrine of unclean hands.

13 NINTH AFFIRMATIVE DEFENSE

14 As a ninth, separate and distinct affirmative defense, this answering
15 Defendant is informed and believes and based thereon alleges that at all times and
16 places alleged in the Complaint, the Plaintiff failed to perform all duties and
17 obligations on her part of any agreement, oral or written, with this answering
18 Defendant, and such acts or omissions bar her recovery herein.

19 TENTH AFFIRMATIVE DEFENSE

20 As a tenth, separate and distinct affirmative defense, this answering
21 Defendant is informed and believes and based thereon alleges that Plaintiff has
22 failed to satisfy one or more express or implied conditions precedent to any
23 obligations allegedly owed to her.

24 ELEVENTH AFFIRMATIVE DEFENSE

25 As an eleventh and separate affirmative defense to the Complaint, this
26 answering Defendant alleges that there existed a legitimate business reason and
27 good cause for any actions taken by Defendant.

TWELFTH AFFIRMATIVE DEFENSE

As a twelfth and separate affirmative defense to the Complaint, this responding Defendant alleges that Plaintiff is barred from asserting each and every purported cause of action in the Complaint by reason of Plaintiff and her agents having ratified, consented, and approved the alleged wrongful acts and/or omissions of this responding Defendant.

THIRTEENTH AFFIRMATIVE DEFENSE

As a thirteenth and separate affirmative defense to the Complaint, this responding Defendant alleges that Plaintiff is equitably estopped from asserting each and every purported cause of action in the Complaint by reason of the acts, the omissions, and conduct of Plaintiff upon which this responding Defendant relied to his prejudice and detriment.

FOURTEENTH AFFIRMATIVE DEFENSE

As a fourteenth and separate affirmative defense to the Complaint, this responding Defendant alleges that Plaintiff could have, by the exercise of reasonable diligence, limited or prevented his damages, if any, as a result of the alleged wrongful acts set forth in her Complaint and she has failed or refused to do so. Such failure or refusal on the part of Plaintiff constitutes a failure to mitigate her damages.

FIFTEENTH AFFIRMATIVE DEFENSE

As a fifteenth and separate affirmative defense to the Complaint, this responding Defendant alleges that Plaintiff is and was, at all times, fully apprized of all material facts regarding each and every act alleged in her Complaint and that she acted or refrained from acting with the full knowledge of all circumstances.

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SIXTEENTH AFFIRMATIVE DEFENSE

As a sixteenth and separate affirmative defense, this responding Defendant is informed and believes, and thereon alleges that the prayer and/or recovery of civil penalties and punitive damages is violative of the United States Constitution generally, and specifically, the Fifth, Eighth and Fourteenth Amendments thereto, as well as applicable provisions of the California Constitution. Therefore, the claim and award of civil penalties would be violative of Defendant's constitutional rights.

SEVENTEENTH AFFIRMATIVE DEFENSE

As a seventeenth and separate affirmative defense to the Complaint, this responding Defendant asserts that he did not have actual or constructive notice of the alleged wrongful conduct of its subordinates.

EIGHTEENTH AFFIRMATIVE DEFENSE

As a eighteenth and separate affirmative defense to the Complaint, this responding Defendant asserts that it did not breach any alleged duty to act fairly and in good faith.

NINETEENTH AFFIRMATIVE DEFENSE

As a nineteenth, separate and distinct affirmative defense, this answering Defendant is informed and believes, and thereon alleges that Plaintiff has failed to exhaust her administrative remedies.

TWENTIETH AFFIRMATIVE DEFENSE

As a twentieth, separate and distinct affirmative defense, this answering Defendant is informed and believes, and thereon alleges that Plaintiff has a lack of standing.

TWENTY-FIRST AFFIRMATIVE DEFENSE

As a twenty-first, separate and distinct affirmative defense, this answering Defendant is informed and believes, and thereon alleges that Plaintiff is barred from

1 recovery by virtue of the failure of Plaintiff to comply with the conditions of the
2 alleged agreement upon which the purported obligations of Defendant may arise,
3 including acts in breach of such agreement, thereby excusing Defendant's
4 performance for failure of conditions.

5 TWENTY-SECOND AFFIRMATIVE DEFENSE

6 As a twenty-second, separate and distinct affirmative defense, this answering
7 Defendant is informed and believes, and thereon alleges that the entire Complaint is
8 frivolous, and has been brought against Defendants in bad faith. Therefore,
9 Defendant is entitled to recover all attorney's fees and costs of suit incurred in
10 defense of the Complaint.

11 TWENTY-THIRD AFFIRMATIVE DEFENSE

12 As a twenty-third, separate and distinct affirmative defense, this answering
13 Defendant is informed and believes, and thereon alleges that Plaintiff's Complaint,
14 and each cause of action thereunder, is premature and, accordingly, bars recovery
15 by Plaintiff.

16 TWENTY-FOURTH AFFIRMATIVE DEFENSE

17 As a twenty-fourth, separate and distinct affirmative defense, this answering
18 Defendant is informed and believes, and thereon alleges that Defendant never
19 received proper notice of breach, and such notice has not been excused or waived.
20 In addition, standard practice in the industry was not followed, barring recovery.

21 TWENTY-FIFTH AFFIRMATIVE DEFENSE

22 As a twenty-fifth, separate and distinct affirmative defense, this answering
23 Defendant is informed and believes, and thereon alleges that Plaintiff's conduct as
24 alleged in the principle action and as set forth in the Complaint was such that any
25 and all liability based thereunder was primary and active thereby precluding any
26 indemnification sought in the Complaint.

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TWENTY-SIXTH AFFIRMATIVE DEFENSE

As a twenty-sixth, separate and distinct affirmative defense, this answering Defendant is informed and believes, and thereon alleges that Plaintiff discharged Defendants from any liability by agreement, cancellation and/or renunciation.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

6 As a twenty-seventh, separate and distinct affirmative defense, this
7 answering Defendant is informed and believes, and thereon alleges that Plaintiff
8 modified, altered, and changed the original agreements, that such modification,
9 alteration, and change was concealed, intentional and without the consent or
10 knowledge of Defendant, and by reason of such modification, alteration, and
11 change, this answering Defendant's obligations under the contract set forth in the
12 Complaint have been rendered extinguished and unenforceable.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

14 As a twenty-eighth, separate and distinct affirmative defense, this answering
15 Defendant is informed and believes, and thereon alleges that the alleged damages
16 in question must be reduced on the basis of set-offs/offsets along with the principle
17 obligation.

TWENTY-NINTH AFFIRMATIVE DEFENSE

19 As a twenty-ninth, separate and distinct affirmative defense, this answering
20 Defendant is informed and believes, and thereon alleges that Defendant is excused
21 from performing any obligations under the contract, and that Plaintiff has prevented
22 Defendant from performing one or more conditions, and Defendant was at all times,
23 ready and able to perform, but for Plaintiff's actions.

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THIRTIETH AFFIRMATIVE DEFENSE

As a thirtieth, separate and distinct affirmative defense, this answering Defendant is informed and believes, and thereon alleges that Plaintiff fails to allege a causal connection between Plaintiff's injuries, if any, and any act or omission of Defendant.

THIRTY-FIRST AFFIRMATIVE DEFENSE

As a thirty-first, separate and distinct affirmative defense, this answering Defendant is informed and believes, and thereon alleges that Plaintiff failed to name an indispensable, and/or necessary party.

THIRTY-SECOND AFFIRMATIVE DEFENSE

As a thirty-second, separate and distinct affirmative defense, this answering Defendant is informed and believes, and thereon alleges that the party with whom Plaintiff dealt lacked authority to bind Defendant.

THIRTY-THIRD AFFIRMATIVE DEFENSE

As a thirty-third, separate and distinct affirmative defense, this answering Defendant is informed and believes, and thereon alleges that Plaintiff has committed an intentional, and/or negligent material misrepresentation regarding the underlying agreement in this action.

THIRTY-FOURTH AFFIRMATIVE DEFENSE

As a thirty-fourth, separate and distinct affirmative defense, this answering Defendant is informed and believes, and thereon alleges that Plaintiff owes Defendant a fiduciary duty of fidelity and a duty to otherwise act for and on behalf of Defendant and in the best interest of Defendant, and otherwise fairly and in good faith, and which duty plaintiff has breached, and by virtue thereof, Plaintiff is completely or partially barred from recovery.

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THIRTY-FIFTH AFFIRMATIVE DEFENSE

As a thirty-fifth, separate and distinct affirmative defense, this answering Defendant is informed and believes, and thereon alleges that there is a lack of subject matter and personal jurisdiction.

THIRTY-SIXTH AFFIRMATIVE DEFENSE

As a thirty-sixth, separate and distinct affirmative defense, this answering Defendant is informed and believes, and thereon alleges that fraud, undue influence, or duress on the part of plaintiff or other parties, prompted the agreement.

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

As a thirty-seventh, separate and distinct affirmative defense, this answering Defendant is informed and believes, and thereon alleges that Plaintiff unreasonably failed to assert his claims in a timely manner and that Defendant was prejudiced thereby. Accordingly, Plaintiff is barred from asserting its claims by the doctrine of laches.

THIRTY-EIGHTH AFFIRMATIVE DEFENSE

As a thirty-eighth, separate and distinct affirmative defense, this answering Defendant is informed and believes, and thereon alleges that Plaintiff's claims are barred by statute of frauds.

THIRTY-NINTH AFFIRMATIVE DEFENSE

As a thirty-ninth, separate and distinct affirmative defense, this answering Defendant is informed and believes, and thereon alleges that Plaintiff failed to perform all conditions, covenants, and promises required to be performed in accordance with the terms and conditions of any written and oral contracts which are the subject of this lawsuit.

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FORTIETH AFFIRMATIVE DEFENSE

As a fortieth, separate and distinct affirmative defense, this answering Defendant is informed and believes, and thereon alleges that the agreement was executed without any consideration whatsoever, and/or insufficient consideration.

FORTY-FIRST AFFIRMATIVE DEFENSE

As a forty-first, separate and distinct affirmative defense, this answering Defendant is informed and believes, and thereon alleges that Plaintiff and Defendant made and entered into a novation.

FORTY-SECOND AFFIRMATIVE DEFENSE

As a forty-second, separate and distinct affirmative defense, this answering Defendant is informed and believes, and thereon alleges that any agreements to which Plaintiff and Defendant were parties, were mutually rescinded, thereby precluding any breaches thereof.

FORTY-THIRD AFFIRMATIVE DEFENSE

As a forty-third, separate and distinct affirmative defense, this answering Defendant is informed and believes, and thereon alleges that the damages suffered by Plaintiff, if any, were the direct and proximate result of accidental omissions, and Plaintiff should indemnify and hold harmless Defendant from any and all damages, claims, costs, judgments, or any and all liabilities that may be recovered against Defendants.

FORTY-FOURTH AFFIRMATIVE DEFENSE

As a forty-fourth, separate and distinct affirmative defense, this answering Defendant is informed and believes, and thereon alleges that the causes of action set forth in the Complaint are barred by the Statute of Limitations.

FORTY-FIFTH AFFIRMATIVE DEFENSE

As a forty-fifth, separate and distinct affirmative defense, this answering Defendant is informed and believes, and thereon alleges that Plaintiff engaged in

1 conduct and activity sufficient to constitute a release of any claim or cause of action
2 which it may otherwise have against Defendant.

3 FORTY-SIXTH AFFIRMATIVE DEFENSE

4 As a forty-sixth, separate and distinct affirmative defense, this answering
5 Defendant is informed and believes, and thereon alleges that at all relevant times
6 Defendant acted without intent to deceive or defraud Plaintiff. Further, plaintiff
7 alleges causes of action which, sounding in fraud, fail to plead fraud with the
8 requisite particularity.

9 FORTY-SEVENTH AFFIRMATIVE DEFENSE

10 As a forty-seventh, separate and distinct affirmative defense, this answering
11 Defendant is informed and believes, and thereon alleges that Plaintiff committed
12 illegal acts in his involvement in the events alleged in the Complaint, consequently
13 rendering Plaintiff's claims for damages as barred as against public policy.

14 FORTY-EIGHTH AFFIRMATIVE DEFENSE

15 As a forty-eighth, separate and distinct affirmative defense, this answering
16 Defendant is informed and believes, and thereon alleges that any alleged
17 agreement had an unlawful object.

18 FORTY-NINTH AFFIRMATIVE DEFENSE

19 As a forty-ninth, separate and distinct affirmative defense, this answering
20 Defendant is informed and believes, and thereon alleges that Plaintiff is barred from
21 recovery under the doctrine of Unjust Enrichment.

22 FIFTIETH AFFIRMATIVE DEFENSE

23 As a fiftieth, separate and distinct affirmative defense, this answering
24 Defendant is informed and believes, and thereon alleges that Plaintiff has been paid
25 in full in connection with any agreement that is the subject of this action.

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FIFTY-FIRST AFFIRMATIVE DEFENSE

As a fifty-first, separate and distinct affirmative defense, this answering Defendant is informed and believes, and thereon alleges that no relationship existed between Defendant and Plaintiff to give rise to damages as a result of the matters stated in the Complaint.

FIFTY-SECOND AFFIRMATIVE DEFENSE

7 As a fifty-second, separate and distinct affirmative defense, this answering
8 Defendant is informed and believes, and thereon alleges that any and all conduct of
9 which Plaintiff complains which is attributed to Defendant was a just and proper
10 exercise of business judgment for a fair and honest reason and regulated by good
11 faith under the circumstances then existing.

FIFTY-THIRD AFFIRMATIVE DEFENSE

13 As a fifty-third, separate and distinct affirmative defense, this answering
14 Defendant is informed and believes, and thereon alleges that Plaintiff is barred from
15 recovery on the principles of accord and satisfaction.

FIFTY-FOURTH AFFIRMATIVE DEFENSE

17 As a fifty-fourth, separate and distinct affirmative defense, this answering
18 Defendant is informed and believes, and thereon alleges that Plaintiff's Complaint is
19 barred by failure to raise the causes of action in a prior action.

FIFTY-FIFTH AFFIRMATIVE DEFENSE

21 As a fifty-fifth, separate and distinct affirmative defense, this answering
22 Defendant is informed and believes, and thereon alleges that Plaintiff's Complaint
23 and each of its causes of action are barred because of Plaintiff's lack of legal
24 capacity to sue.

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FIFTY-SIXTH AFFIRMATIVE DEFENSE

As a fifty-sixth, separate and distinct affirmative defense, this answering Defendant is informed and believes, and thereon alleges that Plaintiff's Complaint and each of its causes of action are barred as a result of the misjoinder of parties.

FIFTY-SEVENTH AFFIRMATIVE DEFENSE

As a fifty-seventh, separate and distinct affirmative defense, this answering Defendant is informed and believes, and thereon alleges that Plaintiff's Complaint and each of its causes of action are barred as a result of the nonjoinder of parties.

FIFTY-EIGHTH AFFIRMATIVE DEFENSE

As a fifty-eighth, separate and distinct affirmative defense, this answering Defendant is informed and believes, and thereon alleges that Plaintiff's Complaint and each of its causes of action are barred by virtue of other pending actions.

FIFTY-NINTH AFFIRMATIVE DEFENSE

As a fifty-ninth, separate and distinct affirmative defense, this answering Defendant is informed and believes, and thereon alleges that Plaintiff's Complaint and each of its causes of action are barred based on account stated.

SIXTIETH AFFIRMATIVE DEFENSE

As a sixtieth, separate and distinct affirmative defense, this answering Defendant is informed and believes, and thereon alleges that Plaintiff had no legal right or interest in the subject matter of the agreement, as alleged in the Complaint, which Plaintiff purported to have with Defendant.

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SIXTY-FIRST AFFIRMATIVE DEFENSE

As a sixty-first, separate and distinct affirmative defense, this answering Defendant is informed and believes, and thereon alleges that he presently has insufficient knowledge or insufficient information upon which to form a belief as to whether he may have additional, yet un-asserted, affirmative defenses. Defendant therefore reserves his right to assert additional affirmative defenses in the event discovery indicates it would be appropriate.

PRAYER

WHEREFORE, this answering Defendant prays that judgment be entered in his favor as follows:

1. That the Complaint be dismissed with prejudice;
2. That Plaintiff takes nothing by way of its Complaint;
3. That in the event of recovery by plaintiff, such recovery be reduced in proportion to Plaintiff's and/or third parties' negligence and/or fault;
4. That this answering Defendant be awarded their costs of suit and reasonable attorney fees herein; and
5. That this answering Defendant recover such other and further relief as the court deems proper.

HainesLaw

DATED: March 19, 2010

By: /s/ Laurence F. Haines
Laurence F. Haines, Esq.
Attorney for Defendant
MARIO MIGUEL MONTALVO, an individual
doing business as SUPER MARIO
PORTABLE FLOORING